FEB 28 1968
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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1015

WILLIAM C. WITHERSPOON,

PETITIONER,

v.

STATE OF ILLINOIS,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

No. 1016

WAYNE DARNELL BUMPER,

PETITIONER,

v.

STATE OF NORTH CAROLINA,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

MOTION OF F. LEE BAILEY TO FILE BRIEF ON THE MERITS AS AMICUS CURIAE

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40 Court Street
Boston, Massachusetts
Amicus Curiae

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Attorney F. Lee Bailey hereby respectfully moves for leave to file a brief *Amicus Curiae* in these cases. The

consent of the attorneys for the respective petitioners has been obtained, and is attached. The consent of the attorneys for the respective respondent-governments was requested but was not given.

The interest of Attorney F. Lee Bailey in these cases arises from the fact that he is counsel to defendants in two cases presently pending in state appellate courts in which the same issue is before the court, namely, whether a State's exclusion from a jury of persons opposed to or with conscientious scruples against capital punishment violates the Sixth and Fourteenth Amendments to the United States Constitution. *Commonwealth* v. *George H. Nassar,* #13995, Supreme Judicial Court, Massachusetts; *Carl Coppolino* v. *State of Florida,* #67-193, Florida Appellate 2. In each of those cases, the defendant was not given the death sentence, although his jury was "qualified" on capital punishment. A more general interest of Attorney Bailey in the cases before this Court arises from the fact that he is a member of the criminal bar, specializing in capital cases, having represented the defendants in over 20 homicide cases, and is therefore greatly concerned with the administration of justice in capital cases.

In the instant case of *Witherspoon* v. *Illinois,* No. 1015, petitioner was sentenced to death in the state trial court, and in the courts below petitioner argued primarily that he had been prejudiced by the State's procedure for jury selection by having received the death sentence. Since it is likely that petitioner may pursue the same course in this court, it it believed that a brief which *Amicus Curiae* is requesting permission to file will contain a more complete argument on the Constitutional issue before this Court, as to whether it is unconstitutional to exclude from a jury persons opposed to capital punishment when the defendant will not or does not get the death sentence.

In the instant case of *Bumper* v. *No. Carolina,* No. 1016, petitioner, in the courts below, on direct appeal, argued the constitutional issue regarding jury selection in capital cases, but did not mention the issue of whether or not a holding in his favor on this issue should be given retrospective effect. Since it is likely that petitioner may pursue the same course in this court, it is believed that the brief which *Amicus Curiae* is requesting permission to file will contain a more complete argument on whether a holding in petitioner's favor in this case should be given retrospective effect.

Respectfully submitted,

F. Lee Bailey, Esquire
40 Court Street
Boston, Mass.
February 23, 1968

Certificate of Service

I, F. Lee Bailey, Esq., 40 Court Street, Boston, Massachusetts, hereby certify that I have air mailed, postage prepaid, pursuant to Rule 33(1) Rules of the Supreme Court of the United States, this motion to the counsel of record in the above entitled cases, this ——— day of February, 1968.

F. Lee Bailey